2002-34

>>> "Scott Bassett, Esq." <scott@scottbassett.com> 04/06/03 09:20PM >>>
Corbin:

I am writing to oppose the proposed amendments to MCR 7.212. For many years prior to my departure for Florida, I was active in the Appellate Practice Section of the State Bar. Through that involvement, I met many outstanding appellate lawyers from all corners of Michigan. The vast majority were solo practitioners or lawyers in very small firms. I can tell you from experience that the time and economic pressures on small firm attorneys are enormous. Most work long hours and sacrifice family relationships in order to survive. The stress associated with solo and small firm practice can, if left unchecked, destroy a lawyer's quality of life.

Even under our existing briefing rules, small firm lawyers doing appellate work can be under considerable time pressures. For most of us who do appellate work in a solo or small firm setting, the "safety valve" of the 28 day stipulated extension is necessary for us to bring order to an all too chaotic professional life. Often the availability of that extension is the only thing that prevents vacations from being cancelled and imporant family activities from being missed. This is especially true if the appellate lawyer has a mixed trial and appellate practice. Lawyers with mixed practices can often find themselves tied up in trial for many consecutive days or weeks, making them entirely unavailable to work on appellate matters. I strongly believe that an appellate lawyer with an active trial practice has certain insights that allow him/her to present appellate issues with a broader and more practical perspective. It would be very poor policy to force those with mixed trial and appellate practices to give up their appellate work due to the loss of scheduling flexibility contained in the proposed amendments.

In my area of practice, family law, the expedited briefing rules for child custody disputes and the fact that many of our matters are appealable only by leave substantially exacerbate appellate time pressures. Extensions are not available for those types of appeals. I know from my contacts with many family law appellate attorneys that many have already given up appeals by leave and appeals from custody orders due to the inability to meet the time deadlines and still maintain their trial court practices. For a family law attorney to balance his/her trial and appellate workload in a way that still allows for a quality presentation of the issues, the availability of extensions in non-custody appeals is critical.

I fear that if the amendments to MCR 7.212 are adopted and we can no longer obtain a stipulated extension (or readily obtain an extension by motion), solo and small firm lawyers will be forced to abandon the practice of appellate law. This is especially true in the family law area. That would be contrary to the public's interest and the interest of the appellate judiciary. Nearly all family law work is done by solo and small firm attorneys. The very attorneys with the specialized knowledge to properly present these important issues to the Court of Appeals would be driven fromthe area because the critical tool they needed to balance their work schedules and private lives would be gone. Instead, appellate work would become the sole province of large firm attorneys who have the staff resources to redirect their other work to partners and associates so they can meet the more rigid deadlines contained in the proposed amendments. We

can be relatively certain that few of these large firm appellate attorneys have any interest or experience in family law appellate matters.

The sad result is that a whole class of litigants, those with family law appellate issues (or any appellate issue in a field typically handled by solo or small firm lawyers), could be shut out of the appellate process. An even sadder result is that the long tradition of solo and small firm attorneys taking their cases to the highest courts in the state would be severely threatened.

I urge that the Court reject the proposed amendments to MCR 7.212.

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